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ENERGY LAW
ARTICLE 9. ENERGY PERFORMANCE CONTRACTS IN CONNECTION WITH PUBLIC
BUILDINGS AND FACILITIES

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NY CLS Energy Article 9 Note (2014)

Energy Article 9 Note

HISTORY:

Add, L 1985, ch 733, § 2, eff Aug 1, 1985.

Former Art 9, add, L 1977, ch 826, eff Jan 1, 1978; repealed, L 1981, ch 725, § 2, eff Jan 1, 1982. .

NOTES:

Editor's Notes

Laws 1985, ch 733, § 1, provides as follows:

Legislative finding. The legislature hereby finds that energy expenditures account for a large portion of the operating costs of public buildings and facilities and that the ability of the owners or operators of such public buildings or facilities to obtain adequate funds to carry out energy conservation and other energy related measures is constrained. The legislature further finds that application of innovative practices used in the private sector to assemble the management resources, technical expertise and funds to install equipment and carry out measures to conserve or produce energy in exchange for a portion of the savings or revenues produced will reduce the energy costs for public buildings and facilities and will thus benefit the people of the state.

Repeal Note

[1981, ch 725] Article nine of the energy law which was repealed applied minimum performance and labeling requirements to room air conditioners and packaged terminal air conditioners. This act consolidated those requirements with other energy efficient devices, added new requirements for central air conditioners and heat pumps and brought the state law into conformance with federal law.

New York References:

This article referred to in §§ 9-101, 9-102



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NY CLS Energy § 9-101 (2014)

§ 9-101. Purpose

The purpose of this article is to obtain long-term energy and cost savings for agencies and municipalities by facilitating prompt incorporation of energy conservation improvements or energy production equipment, or both, in connection with buildings or facilities owned, operated or under the supervision and control of agencies or municipalities, in cooperation with providers of such services and associated materials from the private sector. Such arrangements will improve and protect the health, safety, security, and welfare of the people of the state by promoting energy conservation and independence, developing alternate sources of energy, and fostering business activity.

HISTORY:

Add, L 1985, ch 733, § 2, eff Aug 1, 1985.

NOTES:

Prior Law

Former § 9-101, add, L 1977, ch 826, eff Jan 1, 1978; repealed, L 1981, ch 725, § 2, eff Jan 1, 1982.

Case Notes:

If energy performance contract is in nature of installment purchase contract, it must be reasonably anticipated that dollar amount of each installment payment will be substantially equal. 1985 Op St Compt No. 85-58.



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NY CLS Energy § 9-102 (2014)

§ 9-102. Definitions

For the purposes of this article, the following words and phrases shall have the following meanings unless a different meaning is plainly required by the context.

1. "Agency" means any state department, agency, board, commission, office, or division.
2. "Municipality" means a municipal corporation, as defined in section two of the general municipal law, school district, board of cooperative educational services, fire district, district corporation or special improvement district governed by a separate board of commissioners.
3. "Public authority" means any public authority, public benefit corporation, or the port authority of New York and New Jersey, to the extent its facilities are located within the state of New York.

4. "Energy performance contract" means an agreement for the provision of energy services, including but not limited to electricity, heating, ventilation, cooling, steam or hot water, in which a person agrees to install, maintain or manage energy systems or equipment to improve the energy efficiency of, or produce energy in connection with, a building or facility in exchange for a portion of the energy savings or revenues.

HISTORY:

Add, L 1985, ch 733, § 2, eff Aug 1, 1985.



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NY CLS Energy § 9-103 (2014)

§ 9-103. Energy performance contracts

1. Notwithstanding any other provision of law, any agency, municipality, or public authority, in addition to existing powers, is authorized to enter into energy performance contracts of up to *thirty-five* years duration, provided, that the duration of any such contract shall not exceed the reasonably expected useful life of the energy facilities or equipment subject to such contract.

2. Any energy performance contract entered into by any agency or municipality shall contain the following clause: "This contract shall be deemed executory only to the extent of the monies appropriated and available for the purpose of the contract, and no liability on account therefor shall be incurred beyond the amount of such monies. It is understood that neither this contract nor any representation by any public employee or officer creates any legal or moral obligation to request, appropriate or make available monies for the purpose of the contract."

3. In the case of a school district or a board of cooperative educational services, an energy performance contract shall be an ordinary contingent expense, *and shall in no event be construed as or deemed a lease or lease-purchase of a building or facility*, for purposes of [fig 1] the education law.

4. Agencies, municipalities, and public authorities are encouraged to consult with and seek advice and assistance from the [fig 1] New York state energy research and development authority concerning energy performance contracts.

5. *[Added, L 1989]* Notwithstanding any other provision of law, in order to convey an interest in real property necessary for the construction of facilities or the operation of equipment provided for in an energy performance contract, any agency, municipality or public authority may enter into a lease of such real property to which it holds title or which is under its administrative jurisdiction as is necessary for such construction or operation, with an energy performance contractor, for the same length of time as the term of such energy performance contract, and on such terms and conditions as may be agreeable to the parties thereto and are not otherwise inconsistent with law, and notwithstanding that such real property may remain useful to such agency, municipality or public authority for the purpose for which such real property was originally acquired or devoted or for which such real property is being used.

6. *[Added, L 1994]* In lieu of any other competitive procurement or acquisition process that may apply pursuant to any other provision of law, an agency, municipality, or public authority may procure an energy performance contractor by issuing and advertising a written request for proposals in accordance with procurement or internal control policies, procedures, or guidelines that the agency, municipality, or public authority has adopted pursuant to applicable provisions of the state finance law, the executive law, the general municipal law, or the public authorities law, as the case may be.

7. *[Added, L 1994]* Sections one hundred three and one hundred nine-b of the general municipal law shall not apply to an energy performance contract for which a written request for proposals is issued pursuant to subdivision six of this section.

8. *[Added, L 1997]* In the case of a school district or a board of cooperative educational services, an energy performance contract shall be developed and approved pursuant to the requirements of this section and pursuant to regulations promulgated by the commissioner of education in consultation with the New York state energy research and development authority. Such regulations shall include, but shall not be limited to: a list of the appropriate type of projects that qualify as energy performance contracts; an approval process that includes review of the type and nature of the proposed project, the scope and nature of the work to be performed, and a detailed breakdown of the energy savings to be derived each year and for the duration of the energy performance contract; and a process for ensuring that districts have obtained financing at the lowest cost possible. Such regulations shall require that all energy performance contracts which contain maintenance and monitoring charges as part of the energy performance contract price state such maintenance and monitoring charges separately in the contract in a clear and conspicuous manner. Such regulations shall not apply to energy performance contracts entered into prior to the effective date of such regulations, nor shall they apply to energy performance contracts for which a request for proposals was issued prior to such effective date.

HISTORY:

Add, L 1985, ch 733, § 2, eff Aug 1, 1985; amd, L 1989, ch 638, §§ 1, 2, eff July 21, 1989, L 1994, ch 368, §§ 1, 2, eff July 20, 1994 (see 1994 note below), L 1995, ch 83, § 47, eff June 20, 1995, L 1997, ch 436, § 78 (Part A), eff Aug 20, 1997 (see 1997 note below).

NOTES:

Prior Law

Former § 9-103, add, L 1977, ch 826, eff Jan 1, 1978; repealed, L 1981, ch 725, § 2, eff Jan 1, 1982.

Editor's Notes

Laws 1994, ch 368, § 3, eff July 20, 1994, provides as follows:

§ 3. This act shall not be construed as invalidating any energy performance contract entered into by an agency, municipality, or public authority prior to its effective date.

Laws 1997, ch 436, § 119 (Part A), subs (1) and (20), eff Aug 20, 1997, deemed eff July 1, 1997, provides as follows:

§ 119. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after July 1, 1997, except that:

(1) sections one and seventy-eight of this act shall take effect immediately, and the commissioner of education is authorized and directed to promulgate the regulations necessary to implement the provisions of such sections within 180 days of such effective date;

(20) provided, however, that nothing contained herein shall be deemed to affect the application, qualification, expiration, reversion or repeal of any provision of law amended by any section of this act and the provisions of this act shall be applied or qualified or shall expire or revert or be deemed repealed in the same manner, to the same extent and on the same date as the case may be as otherwise provided by law.

Amendment Notes

1997. Chapter 436, § 78 (Part A) amended:

By adding sub 8.

1995. Chapter 83, § 47 amended:

Sub 4 by deleting at fig 1 "state energy office and the".

1994. Chapter 368, § 1 amended:

Sub 3 by deleting at fig 1 "section twenty hundred twenty-three of" and adding the matter in italics.

1994. Chapter 368, § 2 amended:

By adding sub 6.

By adding sub 7.

1989. Chapter 638, § 1 amended:

Sub 1 by deleting at fig 1 "ten" and adding the matter in italics.

1989. Chapter 638, § 2 amended:

By adding sub 5.

New York References:

Levy of tax for certain purposes without vote, *CLS Educ § 2023*

NYCRR References:

Education department: energy savings performance contracts.8 *NYCRR § 155.16*

Case Notes:

"Expected useful life" of energy facilities or equipment subject to energy performance contract, for purposes of *CLS Energy § 9-103*, is estimated period over which facilities or equipment are reasonably expected to be useful and is not necessarily equated to period of probable usefulness prescribed in *CLS Loc Fin § 11.00(a)* for obligations issued for such facilities or equipment; estimate should be determined pursuant to generally accepted industry standards and should be based on evidence that will provide reasonable accuracy. 1999 Op St Compt No. 99-10.



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NY CLS Energy § 9-107 through 9-113 (2014)

§§ 9-107 through 9-113. [Repealed]

HISTORY:

§§ 9-107-9-110, add, L 1977, ch 826, eff Jan 1, 1978; repealed, L 1981, ch 725, § 2, eff Jan 1, 1982.

§ 9-111, add, L 1977, ch 826, eff Jan 1, 1978; amd, L 1979, ch 253, § 1, eff June 19, 1979; repealed, L 1981, ch 725, § 2, eff Jan 1, 1982.

§ 9-113, add, L 1977, ch 826, eff Jan 1, 1978; repealed, L 1981, ch 725, § 2, eff Jan 1, 1982.